

Create and Implement a Standard Form Contract for Design-Build Services

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January 2019

Problem Statement

The Office of State Engineer (OSE) was created in 1981 by the SC Procurement Code § 11-35-830. The Code requires OSE to be involved in the procurements of construction, architectural and engineering services, construction management services, and land surveys for state buildings. A part of that involvement includes all pre-procurement and post-procurement activities that must be conducted in accordance with the “Manual of Planning and Execution of State Permanent Improvements” (Manual). Likewise, SC Regulation 19-445.2145(F) requires the Manual to be the responsibility of OSE. Therefore, the Manual is written and modified by the OSE personnel every few years, or as necessary due to changes in the law or changes in the methods of contracting for construction and construction related services.

Since contracts are the vehicle used for the procurement of professional services and construction, the SC Regulations specifically lists several contract documents created by the American Institute of Architects (AIA) that are used in the Design-Bid-Build process. The AIA contract documents are written to serve, and be used by, the construction community nationwide. Therefore, the clauses and requirements of the documents are generic in nature and do not attempt to mandate state-specific requirements in procurement. For many years, OSE has included pages of addenda to the various AIA documents that would delete, change or modify the AIA wording. In 2015, OSE was able to sign a Memorandum of Agreement with AIA to create editions of the AIA documents for Design-Bid-Build, Construction Manager at Risk, and Construction Manager Advisor that would be specific to the requirements of South Carolina and be identified as the South Carolina Office of State Engineer (SCOSE) editions.

Although delivery methods for construction have evolved through the years until present day, the default method for the State is Design-Bid-Build. In recent years, Construction Management at Risk (CM-R) has become more prevalent as state agencies seek to select the contractor with an eye towards qualifications versus awarding via “low-bid”. More recently, Design-Build has evolved from being used for mainly “cookie cutter” facilities to a method of construction that can be used for almost any type of facility.

The purpose of this project is to research and review the various Design-Build contract documents being used in the construction industry, determine their applicability for use in Design-Build projects for the State of South Carolina, and suggest/create South Carolina specific Design-Build documents.

History

The use of Design-Build began to accelerate in the 1990’s. Many believed the delivery method would best be used by private sector owners where owners enjoyed flexibility in selecting delivery methods. Typically, procurement laws for federal, state, and municipal governments made it difficult to use Design-Build because of the differing requirements for the selection of designers and contractors. For example, in 1972 the Brooks Act was passed that mandated the selection of design professionals to be based on qualifications, with the best qualified firm negotiating with the government to achieve a fair and reasonable fee. Whereas, contracts for construction had long been based on a competitive, open-bidding, low-bid selection process, with qualifications not being considered. The perception of the Design-Build process from such professional entities as the Associated General Contractors of America (AGC), the American Council of Engineering Companies (ACEC), and state chapters of the AIA was that

owners were being short-changed by not having the benefits of an independent relationship with the designer.

As perception gave way to time and changes in legislation, professional entities began to educate their members about Design-Build and even supported the legislation. In 1993, a non-profit organization known as Design Build Institute of America (DBIA) was formed. The organization is dedicated to expanding the use of Design-Build and promulgating best Design-Build practices. DBIA responded to the concerns of professional organizations by publishing DBIA's Manual of Practice.

In 1996, the "Clinger-Cohen Act" was passed. The publication of DBIA's *Design-Build RFQ/RFP Guide-For Major Public Sector Projects* and *Design-Build RFQ-RFP Guide-For Small to Medium Projects* assisted in leading to the passage of the two-phase Clinger-Cohen Act. The Act permitted the federal government to procure Design-Build services using a two-phase selection process. The first phase involves the evaluation of specialized experience and technical competence of the proposer, with cost related evaluation factors not being permitted. A short-list of 3 to 5 proposers is chosen based on the statements of qualifications. The second phase would have the shortlisted firms submitting proposals in response to a Request for Proposal (RFP). The RFP asks for more detailed technical information on the proposers' design and construction plan, as well as price. The contract is awarded to the Design-Build team with the highest overall ranking, based on a combination of qualifications and price.

The American Bar Association (ABA) Model Procurement Code was first introduced in 1979 to simplify, clarify, and modernize the procurement laws throughout the states. The ABA modified its code in 1999 to include the concept of Design-Build. However, the ABA did not

support the changes to the typical method of Design-Build. First, it did not support “direct” design-build. That is, an owner selects the Design-Builder solely on qualifications and then works directly with the Design-Builder to develop the program, design and price the project, and ultimately construct the project. Second, the ABA created a new position known as the Independent Peer Reviewer (IPR). The role of the IPR is to confirm that the architectural and engineering design provided by the Design-Builder is in accordance with the standard of care. Third, the ABA strongly suggested the owner draft an RFP that contains detailed design criteria. The RFP would provide a description of the “...required features, functions, characteristics, qualities, and properties required...”, as well as schedule, budgets, and other documents illustrating the scale and relationship of the features of the project. This concept known as “bridging documents” or “programming documents” is controversial in that an owner can proceed too far in advancing the design prior to engaging the Design-Builder.

Data Collection

The collection of data and history for the use of Design-Build will be taken from the following:

1. Research the various types of previously awarded Design-Build contracts through OSE for the construction of state facilities. The research may include interviewing OSE Project Managers or agency Project Managers to get feedback on the contracts used, their strengths and weaknesses.
2. Research the various types of Design-Build contracts being used by other state governments. The research may include searching the web and/or sending out a query to the National Association of State Facilities Administrators (NASFA).

3. Research data and the Design-Build contracts developed by DBIA.
4. Research data and the Design-Build contracts jointly developed by a coalition of construction industry organizations representing contractors and facility owners, known as the Consensus Documents.
5. Research data and the Design-Build contracts written by the AIA.
6. Research data and the Design-Build contracts jointly developed by the American Council of Engineering Companies, the Associated General Contractors of America, the American Society of Civil Engineers, and the National Society of Professional Engineers, known as the Engineers Joint Contract Document Committee (EJCDC) documents.
7. Conduct a general search of the web to glean additional information concerning Design-Build contracts.

Data Analysis

1. Previously awarded Design-Build Projects: Researching and reviewing past projects that have been managed by the OSE, I find that these projects range from a stand-alone shop building to an office building. The analysis of the data from the projects listed below is that a standard method for contracting for initial design services and/or design-build services does not exist. According to the OSE Project Managers and Agency Project Managers, a great deal of time was spent modifying contract documents for them to be compliant with specific State contractual language.
 - a. DNR Shop building, Bonneau Ferry – The facility is an enclosed 30'x40' shop with three additional open bays (16'x30' each). The initial documents were created by the staff at DNR and used as the design criteria for the Design-Builder to base their fee and construction. Due to the small size of the project

(approximately \$60,000) and the limited number of contractors for such a facility, only one contractor proposed. DNR contracted with the firm using a modified EJCDC Agreement and General Conditions. The EJCDC documents were modified several times, sent back and forth between the two parties, finally agreed to and signed.

- b. College of Charleston (CofC) Bell Building, Charleston – The project consisted of an interior renovation of approximately 7,000 sq. ft. on the second floor of a facility located in downtown Charleston and previously owned by Southern Bell. Since the CofC Physical Plant staff is comprised of architects and engineers, the Schematic design was created in-house and given to the Design-Builder as the design criteria. The CofC staff also conducted the Independent Peer Review of the Design-Builders design to insure compliance with the Owners criteria. CofC contracted with the firm using a modified EJCDC Agreement and General Conditions. The EJCDC documents were modified several times, sent back and forth between the two parties, finally agreed to and signed.
- c. DNR Hub Office, Florence – The facility is a two story 8,315 sq. ft. building to house office and training assembly spaces. The project was originally designed by an A/E firm and sent out for bidding. The bids received were above the funds available for the project and DNR proposed to investigate whether a Design-Build firm could review the existing bid documents, suggest cost cutting measures, and provide the facility within the funds available. The Design-Builder offered his company standard Design-Build contract to the State. The Design-Builders

contract was modified several times, sent back and forth between the two parties, finally agreed to and signed.

- d. Child Development Center, Clemson – The facility is 13,000 sq. ft. building to serve University faculty, staff and students. The facility includes classrooms, outdoor play areas, laundry, office spaces, storage, parking and appropriate fencing and lighting to promote safety. The facility is constructed and managed to meet National Association for the Education of Young Children (NAEYC) accreditation standards. Clemson contracted with the firm using a modified EJCDC Agreement and General Conditions. The EJCDC documents were modified several times, sent back and forth between the two parties, finally agreed to and signed.
2. Contracts used by other state governments: An inquiry made through NASFA to its nationwide membership provided data from 11 states. The responses of the 11 can be summarized into three categories:
 - a. The procurement laws of the state do not allow design-build,
 - b. The procurement laws of the state allow design-build; but they have not used the delivery method, or
 - c. The procurement laws of the state allow design-build, and they have used the delivery method.

There are common themes among all the states that are able and have used design-build as a construction delivery method.

- a. The two-step method of procurement is typically used to engage a design-builder, (i.e.) advertise a Request for Qualifications and then provide a Request for Proposals to the shortlisted firms.
 - b. An entity (or the state agency) is typically hired to produce programming documents that are included in the RFP as the basis of design.
 - c. The states have written their own contract rather than use an “industry standard” contract that might be used in the private sector.
3. The analysis of the data received from the collection of items #3 through 7 has been captured in Exhibit B. Since the purpose of this project is to review existing documents and compare them to what we can do by law, or logistically, the following is a review of the data accordingly:
 - a. Philosophy and Forms: It is the desire of the Office of the State Engineer to utilize the appropriate number of documents that are required to contract with a firm or firms. In most cases, that requirement would be two contracts: one for the Technical Consultant and one for the Design-Builder. As noted in Exhibit B, because these contracts attempt to engulf all possible scenarios for conducting a Design-Build project, the standard appears to be as few as three separate documents with the possibility of six.
 - b. Technical Consultant: Believing that it is very important to have a Basis of Design to guide the Design-Builder before he begins, it was surprising to me that several of the industry standards did not require a Technical Consultant prior to contracting with the Design-Builder. Nonetheless, the reason for an agency to hire a Technical Consultant is to start the Design-Builder in the right direction

towards the facility that is desired. As has been noted previously in this paper, the danger in utilizing a Technical Consultant is allowing the Consultant to design “too much” and not give the Design-Builder the opportunity to utilize his design professional. The South Carolina Procurement Law helps to minimize the scope of the work for the Technical Consultant by limiting the dollar amount of fees. In accordance with SC Law § 11-35-3230, an agency can contract directly with a design professional for design services if the fee is less than \$25,000. For fees larger than \$25,000, SC Law § 11-35-3220 would require agencies to conduct a qualifications-based selection and thus advertise for services, receive and review resumes’, shortlist and interview, negotiate, and contract. A process that can take several months. Therefore, by limiting the dollar amount of the fees, an agency limits the scope of the Technical Consultant.

- c. Enter the Design-Builder: Typical Design-Build projects for facilities have either used a Technical Consultant to produce the Programming Documents, or the project scope required very little in the way of design criteria and the advertisement for the Design-Build was able to proceed almost immediately. With the latter being the exception, it is the intent of the state to provide Programming Documents to the competing Design-Build firms and hire them following the RFP competition.
- d. Approach to Programming Documents: The Programming Documents set the criteria and the framework for the Design-Builder’s scope of work. Without relieving the Design-Builder of any design responsibilities, the Programming Documents will address design objectives and concepts, site plan, approximate

gross areas and space requirements, space adjacencies and flexibility, preliminary cost estimating, building code compliancy, special equipment, and special finishes.

- e. Cost of the Contracts: The purchase price of the various documents varies depending on membership in the authors organization. Also, the cost of the forms, while minimal compared to the amount of the construction contract, is just the beginning to the man-hours required to revise and reconfigure the contracts to align with South Carolina Procurement law.

Implementation Plan

The plan to implement the contracts required by this project are as follows:

Action Steps:

1. An OSE project manager(s) will be assigned to write the contract between the Owner and the Design-Build Technical Consultant, and the contract between the Owner and Design-Builder.
2. Utilizing the four industry standards noted in this project and gleaning portions of contracts previously written by OSE, create an outline of the contract form and the sections required.
3. As the contracts begin to take shape, request a review by legal counsel.
4. Incorporate comments by legal counsel and complete the first draft of the contracts.
5. Provide first draft review to agency construction project managers and OSE project managers that have used the Design-Build project delivery.

6. Incorporate the review comments as applicable and provide legal counsel with a second draft for review.
7. Incorporate legal comments into the contracts and prepare the final.
8. Post the final contracts for promulgation to the general public.
9. Incorporate public comment into the final document, as applicable, and post the contracts on the OSE website for use.

Timeframe and cost: The initial time for an OSE Project Manager to create the contracts should take about a month; assuming he/she does not have other OSE duties and projects to fulfill. However, as noted above, the greater amount of time will be required for two legal reviews, a review by our stakeholders, and promulgation to the public.

Potential Obstacles and Methods to Overcome Them: Obstacles to any project begin with time available. Given the amount of time an OSE Project Manager uses in a day for his various design/construction projects, can he also find the time to create a new contract for Design-Build? The answer is yes; however, this author notes from experience that a well-written contract only comes from time that is well spent and focused. Likewise, legal counsel must be ready and timely with the review and comment of various submittals presented by the project manager. Therefore, there must be an agreement made between management, the contract author, and legal counsel that sufficient time can be allotted for the project.

Potential Resources: The resources required to achieve the fulfillment of this project are those existing contracts noted in the body of this report, a willing and able project manager, and legal counsel knowledgeable of construction contract language.

Integration into Standard Operating Procedure: Once the action steps noted above have been completed the implementation of the contracts into the standard operating procedure of the Office of State Engineer can be accomplished. Presently, OSE has included, in Chapter 12 of the Manual, procedures to accomplish a Design-Build project. Since Chapter 12 does not specify the contract to be used, a standard Design-Build contract(s) can be added to the database of existing contracts on the OSE website.

Summary & Recommendations

A state agency must consider and understand the drivers for its project and what delivery method offers the best chance to achieve the project goals. In the case of Design-Build, the drivers are often speed of design and construction. The successful completion and implementation of the contracts referenced in this project will assist:

1. State agencies utilizing the Design-Build delivery method by providing a “state approved” contract template that has been created for the use in the SC procurement system and therefore contain all necessary clauses and language required by SC Procurement Law.
2. Agency personnel that will use the “state approved” contract as they monitor and enforce the contract requirements.
3. Project Managers in the Office of State Engineer that, except for the inclusion of “project specific” information, will be familiar with the contract requirements during the construction rather than spending time reviewing a revised-industry standard contract.

4. Design-Build Consultants that will be contracted to perform the initial design criteria by using a specific contract for those specific services.

In summary, it is in the best interest of the State to have a Design-Build contract and a Design-Build Technical Consultant contract that has been vetted by the Office of State Engineer, legal counsel to the Office of State Engineer, and agency personnel that would be involved with the monitoring and enforcement of contract requirements during a Design-Build project.

References

Michael Loulakis, "Design-Build for the Private Sector"

Bright Atrial & Calvin T. Vick Jr, "South Carolina Construction Law Desk Book"

DBIA Manual of Practice Doc. No. 210

DBIA Manual of Practice Doc. No. 212

ABA Model Procurement Code

EXHIBIT "A" - Contracts for Design/Build Construction Projects

Inquiry: November 7, 2018

INQUIRY:

For facility construction projects utilizing Design/Build as the project delivery method, does your state:

1. Use the two phase process in Design/Build by hiring a Technical Consultant to create bridging documents (technical criteria) and then advertise for a Design/Builder?
2. If so, do you use an industry standard Design/Build contract for the Technical Consultant and/or Design/Builder? Which contract(s)?
3. If not, have you created a state specific contract for the Technical Consultant and/or Design/Builder? Can we have access to the contract template(s)?

RESPONSES:

STATE	CONTACT	RESPONSE	OTHER
Nebraska	John F. Heacock, AIA Capital Construction Analyst Nebraska Dept of Administrative Services 402-471-0428 john.heacock@nebraska.gov	<ol style="list-style-type: none"> 1. Nebraska statutes for the design-build delivery method refer to hiring a consultant to assist with the preparation of project performance criteria for the RFP. I take this to mean that the consultant will create bridging documents which will be used to advertise for a design-builder. See attached Statute 39-2810. 2. Since the design-build concept is so new, the design-build contract will need to be created with the assistance of DAS Legal and other agencies who intend to use it. The State in the process of standardizing the construction contract for projects between \$15k and \$705k that are bid using the design-bid-build delivery method, but I have yet to review any contracts that the State intends for design-build. The State uses the AIA-2007 Standard Form of Agreement Between Owner and Contractor for construction projects over \$705k. For consultants, the State uses a standard consultant contract for projects up to \$2m in total project cost. Above that, we use the AIA B101-2007 or 2017 agreement. 3. I am not aware of any template. When I discussed this with the Game and Parks Commission (who initially put 	no agency has utilized design-build for any construction projects since the statues were created in 2016, so I don't have a lot of information on how the process has worked or specific details regarding contracts

		this before the legislature), they told me that they had no immediate intention to use the design-build delivery method, but that they simply wanted it as another option to the standard design-bid-build method.	
New Mexico	Marty Perrins-Dallman Deputy Director Facilities Management Division General Services Dept. 505-470-8084 Martha.Perrins-Dall@state.nm.us	<ol style="list-style-type: none"> 1. Yes 2. No 3. Yes, Documents attached 	<p>We fashioned the DB contract from the AIA template around 8 years ago.</p> <p>The scope of work for the AE bridging documents—we used the standard AE contract and modified the SOW. Let me know if you want me to dig that up....</p>
Ohio	Lane Beougher, FAIA Energy Program Manager Ohio Facilities Construction Commission 614-644-8331 Lane.Beougher@ofcc.ohio.gov	<ol style="list-style-type: none"> 1. The State of Ohio uses a two-step selection process for Design-Build projects. We publish a Request for Qualifications, score submissions to a short list of three firms, and send them a Request for Proposal. Design criteria is developed by a Criteria Architect/Engineer, who must be a licensed design professional. 2. We use our own agreements, conditions, and proposal documents. All of our documents are available on our website: http://ofcc.ohio.gov/Documents/Agreements-and-Standard-Requirements on the Design-Build tab. 	<p>Design-Build, CMat Risk, and Single-Prime Contract project delivery methods were implemented in response to legislation passed in 2011 after 134 years of being a Multiple-Prime only state. Thanks!</p>
Tennessee	Peter L. Heimbach, Jr Director of Special Projects Real Estate Asset Management 615-253-3989 peter.heimbach@tn.gov	Tennessee does not use Design/Build	

Maine	Joseph Ostwald Director of Division of Planning, Design and Construction 207-624-7353 Joseph.Ostwald@maine.gov	<ol style="list-style-type: none"> 1. Yes, Consultant for bridging docs, then RFP for D/B team. 2. State of Maine form for the Consultant (see our website: cc) and AIADocs for the D/B. 3. For the Consultant the form is the “Core Consulting Service” on our website: http://www.maine.gov/dafs/brem/forms 	D/B and CM procurement is by special arrangement and permission of our Bureau Director. Those procurements are rarely used in Maine.
Texas DOT	Sam Copeland Project Coordinator III Texas DOT 210-615-5875 Sam.copeland@txdot.gov	<ol style="list-style-type: none"> 1. Sometimes but we have a cooker cutter for new buildings 2. We have PEPS which uses negotiated contracts with different architecture and engineering firms. 	
Michigan	Kerri Droste State Facilities Administration Design and Construction drostek@michigan.gov	<ol style="list-style-type: none"> 1. We do not hire a Technical Consultant, handle in house 2. See above 3. We do not have a specific contract for Technical Consultant 	
Connecticut	David H. Barkin Chief Architect Construction Services Dept of Administration Services 860-713-5631 David.barkin@ct.gov	<ol style="list-style-type: none"> 1. Connecticut hires a criteria architect to develop a comprehensive 3 volume package including front-end requirements, technical requirements (minimum level of quality), and a detailed project program. 2. We do not have a standard contract. 	

Missouri	<p>Charlie Brzuchalski Chief Architect Architectural Design & Review services Office of Administration 573-526-7814 Charlie.brzuchalski@oa.mo.gov</p>	<ol style="list-style-type: none"> 1. Our D/B contracts have used several variations of the two phase selection award process. 2. Missouri does not have a standard spec for D/B contracts 3. No answer 	<p>A shortlist of highly qualified D/B teams is identified in Phase One based on A/E selection and past performance contractor qualification process. Submittals of Schematic Design by the D/B teams is scored in Phase 2 on the cost proposed, team submitted, and the evaluation of the design.</p>
Washington	<p>Roland Orr Contracts Manager Engineering & Architectural Services 360-407-9361 Roland.orr@des.wa.gov</p>	<ol style="list-style-type: none"> 1. No answer 2. The Dept of Enterprise Services has developed standard contracts for progressive design/build and design/build projects. 3. See above 	
West Virginia	<p>Robert Kilpatrick Business Manager General Services Division Dept of Administration 304-957-7132 Robert.p.kilpatrick@wv.gov</p>	<ol style="list-style-type: none"> 1. A state agency wishing to undertake a D/B project, with the approval from the Design-Build Board, enlists the services of a Performance Criteria Developer to prepare a Performance Criteria package which is included as part of the Invitation of Proposals. 2. State of WV Purchasing Division does not provide a standard contract for D/B 3. More information concerning the Board is available at www.wvdbb.wv.gov. 	

EXHIBIT “B” – Comparison of Standard Form Design/Build Contracts

Philosophy and Forms

Design Build Institute of America	Consensus Documents	AIA Documents	EJCDC
DBIA 501 – Contract for Design-Build Consultant DBIA 520 – Preliminary Agreement Between Owner and Design-Builder DBIA 525 – Owner/Designer-Builder Agreement – Lump Sum DBIA 535 – General Conditions of Contract Between Owner and Design-Builder	CD 400 - Preliminary Design-Build Agreement Between Owner and Design-Builder CD 415 – Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum)	A141 - Agreement Between Owner and Design-Builder Exhibit A: Design-Build Amendment Exhibit B: Insurance and Bonds Exhibit C: Sustainable Projects C141 – Agreement Between Owner and Consultant for a Design-Build Project Exhibit A: Consultant Services	D 500 – Agreement Between Owner and Owner’s Consultant D 520 – Agreement Between Owner and Design-Builder on the Basis of a Stipulated Price D 700 – Standard General Conditions of the Contract Between the Owner and Design-Builder
Commentary: The process of contracting for a design-build project by the four compared standard documents requires the use of at least three, and as many as six, documents. It is the intent of this project to minimize the number of documents.			

Technical Consultant

Design Build Institute of America	Consensus Documents	AIA Documents	EJCDC
It is not a requirement to utilize a technical consultant; but, if the DB 501 is used, the consultant is heavily involved in formulating and distributing the RFQ/RFP’s, conducts the preproposal conference, acts as the Owner’s representative during the design and construction phase, conducts site visits, approves the design-builders pay applications, and performs final inspections	Consensus does not have a standard form agreement between the Owner and Consultant	Using the C141 is not a requirement, though it is presumed the Owner will retain a consultant to develop technical criteria and perhaps create “bridging documents”. Using the C141 also requires the use of the Exhibit to fully delineate the Consultant’s services. Services can extend from initial information gathering, programming, bridging documents, design services, design-builder procurement assistance, conducts	The D-500 is a contract between the Owner and a design professional consultant to assist the Owner in preparing the RFQ/RFP, the design-build conceptual documents, the project’s other contract documents, and may assist the Owner in evaluating and selecting the design-builder. At the Owner’s option, the scope of the Owner’s Consultant’s services in the Agreement may be expanded to include additional services, such as assisting the Owner during the design and construction of the project.

		site visits, approves the design-builders pay applications, and performs final inspections	
Commentary: Most of the design-build projects that would be administered by OSE will require a Technical Consultant. By the SC Procurement Law, a design professional can be hired directly if the fee is <\$25,000, known as a Small Contract. If the fee is larger than \$25,000, the project has to be advertised, resumes' of the professional firms submitted, a Selection Committee formed, conduct interviews with the shortlisted firms, and choose a firm, and negotiate. Also, it should be intent of the Technical Consultant to provide Programming documents; thereby, allowing the Design-Builder the opportunity to utilize the design portion of his contract. Thus, in most cases, the Technical Consultant can be hired directly and complete his scope of work for less than \$25,000.			

Enter the Design-Builder

Design Build Institute of America	Consensus Documents	AIA Documents	EJCDC
The DBIA documents have an option to retain the design-builder at the earliest possible point. Also, if the programming has not been completed the Design-Builder can assist the Owner in its' development and proceed to Schematic design. This method requires an initial award to assist the owner, approval of the programming or Schematic, and the final award for the lump sum construction.	The Consensus documents have an option to retain the design-builder at the earliest possible point to review the Owner's Program or assist the Owner in its' development and proceed to Schematic design. This method requires an initial award to assist the owner, approval of the programming or Schematic, and the final award for the lump sum construction.	The AIA documents utilize the bridging documents concept before the Design-Builder is retained. However, the Design-Builder has the opportunity to change the Owner's criteria, perform another preliminary design and submit the proposal to the Owner.	The EJCDC documents are more closely related to the method utilized by OSE. The contract with the design-builder notes that he has reviewed the concept drawings supplied by the Owner and will continue the design and construction accordingly.
Commentary: In the RFP competition by the shortlisted Design-Builders, the State intends that the proposers have reviewed the Programming documents and will abide the criteria that is contained therein. Hiring the Design-Builder as soon as possible and having him assist in the criteria development or change the criteria, suggests the Owner has wasted money by hiring a Technical consultant. In our opinion, design-build projects have proceeded most smoothly when the criteria match the owners desire, the Design-Builders propose on the agreed-upon criteria, and the facility is constructed accordingly.			

Approach to Programming Documents

Design Build Institute of America	Consensus Documents	AIA Documents	EJCDC
The DBIA documents are flexible to allow any form of design-build, including Programming documents, design competition, and progressive design-build. However, the DBIA 501 only addresses the Programming	Although there is no standard Owner-Consultant Agreement, the documents for the Design-Builder could be used with a Programming approach.	The AIA documents are flexible to allow any form of design-build, including Programming documents, design competition, and progressive design-build. Although a C141 is not a requirement, it is presumed the owner will retain a consultant for the	The EJCDC documents are more closely related to the method utilized by OSE. The contract with the Technical Consultant allows for Programming prior to engaging the Design-Builder.

Documents as a report with a “summary description of the project”.		development of the criteria before the Design-Builder is engaged.	
Commentary: Most of the design-build projects that would be administered by OSE will require a Technical Consultant. It is the intent of the Programming Documents to solidify the criteria of the Owner such that the RFP competition by the shortlisted Design-Builders is accurate in its’ future requirements for construction.			

Design by the Design-Builder

Design Build Institute of America	Consensus Documents	AIA Documents	EJCDC
The DBIA documents use the Basis of Design as the benchmark for changes as the design-builder proceeds through the Schematic, Design, and Construction Documents.	During the design phase the D-B evaluates the Owners program, proposes alternatives, provides a preliminary schedule and estimate, and proceeds to schematic, design, and construction documents.	If the A141 allows for work to proceed prior to the execution of the Design-Build Amendment, the design-builder could modify the Owners criteria. The acceptance of the revised criteria is a modification to the contract. The Design-Builder is required to produce a Preliminary Design that will be reviewed by the Owner. If approved the contract is amended to include the production of Construction Documents and begin construction.	The Design-Builder is required to produce a Preliminary Design that will be reviewed by the Owner. If approved, the Design-Builder will proceed with the production of Construction Documents and begin construction.
Commentary: All four processes for moving into the design phase and the review of the design documents are similar. Each uses a form of the Schematic, Design, and Construction Documents; while, also looking back at the Basis of Design to ensure compliance.			

Cost

Design Build Institute of America	Consensus Documents	AIA Documents	EJCDC
The four DBIA documents noted in the first table above would cost \$600 for each project.	A subscription package for unlimited use of the Consensus documents for one year is \$1,000.	The six AIA documents noted in the first table above would cost \$200 for each project.	The three EJCDC documents noted in the first table above would cost \$600 per project.
Commentary: The cost of the forms is minimal compared to the time to revise and reconfigure them to meet the specifics of the SC Procurement law.			